

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

DAVID B. STARKEY,

Plaintiff,

v.

Civil Action No. 3:11-cv-01217

**FIRST MAGNUS FINANCIAL
CORPORATION, STONECREST TITLE
ESCROW CO. LLC, MERS MORTGAGE
ELECTRONIC REGISTRATION, BANK
OF AMERICA HOME LOAN SERVICING
LP, WILSON & ASSOCIATES, P.L.L.C.,
3614 LASCASSAS PIKE, LASCASSAS, TN
37130,**

Defendants.

**DEFENDANTS BANK OF AMERICA, N.A. AND
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.'S
MOTION TO DISMISS**

Defendants Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP,¹ (“BANA”) and Mortgage Electronic Registration Systems, Inc.² (“MERS”) (collectively, “Defendants”), by their undersigned attorneys, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, respectfully move this Court for an order dismissing Plaintiff’s “Complaint to Enjoin Trustee’s Sale, Tennessee, for Violations of 15 USC Sec. 6101; Consumer Protection Act; Truth in Lending Act; Fraud; and Fiduciary Duty” (the “Complaint”) for failure to state a claim upon which relief can be granted.

¹ Plaintiff identified “Bank of America Home Loan Servicing LP” as a defendant in this action. There is no legal entity by the name of “Bank of America Home Loan Servicing LP.” Defendants assume that Plaintiff intended to sue BAC Home Loans Servicing, LP. As of July 1, 2011, BAC Home Loans Servicing, LP merged with and into Bank of America, N.A. Therefore, Bank of America, N.A. is the proper defendant in this action.

² Plaintiff identified “MERS Mortgage Electronic Registration” as a defendant in this action. There is no legal entity by the name of “MERS Mortgage Electronic Registration.” Defendants assume that Plaintiff intended to sue Mortgage Electronic Registration Systems, Inc.

In further support of this Motion to Dismiss, Defendants rely upon their concurrently filed memorandum of law.

Accordingly, Defendant Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc. respectfully request that this Court grant their Motion to Dismiss and dismiss the Complaint with prejudice.

This is the 28th day of December, 2011.

Respectfully submitted,

/s/ Paul Allen England

Donna L. Roberts (BPR No. 22249)

Paul Allen England (BPR No. 26288)

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*Counsel for Bank of America, N.A. and
Mortgage Electronic Registration Systems,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2011, a copy of the foregoing was filed electronically with the Clerk's Office by using the CM/ECF system to and served electronically and/or via first-class U.S. mail, postage prepaid, upon all counsel as indicated below. Parties may also access this filing through the Court's ECF system.

Via U.S. Mail:

David B. Starkey
3614 Lascassas Pike
Lascassas, Tennessee 37130
Plaintiff

/s/ Paul Allen England

Paul Allen England